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Applicants: Stephen N. Donnigan, Jeffrey S. Lewis, and Lance E. Smith
Application Number: 10/621,241
Filed: July 15, 2003
Title: Decoy Moving Apparatus and Methods
TC/A.U: 3643
Examiner: Kurt C. Rowan

Assignee: Dynamic Decoy Technologies, LLC
Attorney Docket: DynDecoy-US Nonprov
Customer No. 33549

RESPONSE TO RESTRICTION REQUIREMENT**UNDER 35 U.S.C. § 121****I. INTRODUCTORY REMARKS:**

In the official action mailed September 13, 2004, the Examiner requires restriction in the above-referenced application. The Examiner believes that the claims are directed to a plurality of disclosed patentably distinct species including Fig. 1, Fig. 2, Fig. 3, Fig. 4, Fig. 5, Fig. 6, Fig. 8, Fig. 9, Fig. 10, and Fig. 13. A shortened statutory period of 1 month has been set, making a response to this action due on or by October 13, 2004. Assignee has filed herewith a Petition for Extension of Time (two months) for the reply, to and including December 13, 2004.

Election of Species; Remarks begins on page 2 of this reply.

Amendments to the Claims begins on page 3 of this reply.

Conclusions begins on page 23 of this reply.

II. ELECTION OF SPECIES; REMARKS:

The Assignee, after review of the Examiner's restriction requirement, hereby elects for further prosecution in the present application the claims drawn to Figure 1. The claims that are readable on this elected species are 1-5, 31-45, 50-63, 89-108, 113-116, 118-123, 127-137, 140-149. The Assignee also indicates that it has amended claims 117 and 127 to correct minor errors. It is not believed that these amendments add new matter to the application.

The Assignee notes that certain of the elected claims are readable on Figures that the examiner feels are directed to separate species. Thus, in this sense, certain of the claims are generic (please see the definition of a generic claim as stated in MPEP §806.04(d)). Upon their allowance, Assignee reserves the right to add certain of the claims that depend from these generic claims and that are directed to the non-elected Figures, in accordance with 37 CFR §1.141(a).

MPEP §816 requires that "The particular reasons relied on by the examiner for holding that the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion inadequate. The reasons upon which the conclusion is based should be given." The Assignee respectfully requests that the examiner supply to the Assignee a statement of the reasons for the restriction, as it appears that such statement was not provided in the restriction requirement of October 13, 2004.

The Assignee has made this election to expedite consideration of elected claims in this application without waiving the right to add dependent claims during prosecution or to file other applications such as continuations, divisions, or continuations-in-part.

Assignee has prepared a set of claim amendments (see Section III, immediately below) in accordance with revised 37 C.F.R. 1.121 in which certain claims are withdrawn or canceled. Assignee notes that claim status indications of "withdrawn" in parentheses indicate that the referenced claim is being withdrawn without prejudice in response to a restriction requirement, and that claim status indications of "canceled" in parentheses indicate that the referenced claim is being cancelled without prejudice.